

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

ANTONIO COLSON,

Plaintiff,

v.

OHIO DEPARTMENT OF
REHABILITATION AND
CORRECTION,

Defendant.

Case No. 1:20-cv-595

JUDGE DOUGLAS R. COLE

Magistrate Judge Bowman

ORDER

This cause comes before the Court on the Magistrate Judge's September 30, 2020, Report and Recommendation ("R&R") (Doc. 5). The Magistrate Judge recommends that the Court **DISMISS** with prejudice the Plaintiff's 42 U.S.C. § 1983 claim because the sole named defendant, the Ohio Department of Rehabilitation and Corrections ("ODRC"), is not a "person" acting under color of state law. Moreover, as a state agency, it is immune from suit under the Eleventh Amendment.

The R&R advised both parties that a failure to object within the 14 days specified by the R&R may result in forfeiture of rights on appeal, which includes the right to District Court review. (R&R at #52). *See also Thomas v. Arn*, 474 U.S. 140, 152 (1985) ("There is no indication that Congress, in enacting § 636(b)(1)(C), intended to require a district judge to review a magistrate's report to which no objections are filed."); *Berkshire v. Beauvais*, 928 F.3d 520, 530 (6th Cir. 2019) (noting "fail[ure] to file an objection to the magistrate judge's R & R ... is forfeiture"); 28 U.S.C.

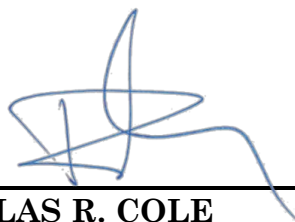
§ 636(b)(1)(C). The time for filing objections has long since passed, and none have been filed.

Therefore, the Court **ADOPTS** the Report and Recommendation (Doc. 5) and **DISMISSES** the Plaintiff's Complaint **WITH PREJUDICE**. In doing so, however, the Court notes that, while this determination precludes Colson from suing ODRC on these facts, Colson remains free to file a new case against an appropriate defendant if he can identify one. *See Sullivan v. Chappius*, 711 F. Supp. 2d 279, 283–84 (W.D.N.Y. 2010) (noting that employees of state agencies are typically not in privity with their agency employer for res judicata purposes). The Court further **ADOPTS** the recommendation that Colson's motion for appointment of counsel (Doc. 2) be **DENIED** as moot. As reasonable jurists could not disagree with these conclusions, Colson is denied a certificate of appealability and the Court certifies to the Sixth Circuit that any appeal would be objectively frivolous. The Court **DIRECTS** the Clerk to enter judgment accordingly.

SO ORDERED.

March 23, 2021

DATE


DOUGLAS R. COLE
UNITED STATES DISTRICT JUDGE